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In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-353

CERTIFIED GROCERS OF ILLINOIS, INC., et al.,
Petitioners,

vs.

SPARKLE FOOD CENTER, INC., and HICKORY HILLS SUPER MART, INC.,
Respondents.

BRIEF IN OPPOSITION

Respondents respectfully submit that the petition for writ of certiorari should be denied because the judgment of the Illinois Supreme Court is not based upon the United States Constitution, but rather rests upon an independent, adequate basis in Illinois law.

(1)

This Court will not grant certiorari where the judgment below is based on state law.

This Court will not review on certiorari the judgment of a state court which is based upon an independent and ade-

quate state ground. In such cases, this Court has no jurisdiction under 28 U.S.C. §1257(3). *Jankovich* v. *Indiana Toll Road Commission*, 379 U.S. 487, 491-2 (1965); *Hudson* v. *Illinois*, 405 U.S. 965 (1927); *Fox Film Corp.* v. *Muller*, 296 U.S. 207, 210 (1935); *Lynch* v. *New York ex rel. Pierson*, 293 U.S. 52, 54-55 (1934).

Where a state court decision does not specifically indicate that it was based upon a federal ground, or it is unclear what ground was relied upon, and an independent state ground supports the decision, this Court will deny certiorari. *Stembridge* v. *Georgia*, 343 U.S. 541, 547 (1951); *Cuyahoga Power Co.* v. *Northern Realty Co.*, 244 U.S. 300, 304 (1917); *Allen* v. *Arguimbau*, 198 U.S. 149, 154-155 (1905).

In *McGoldrick* v. *Gulf Oil Corp.*, 309 U.S. 2, 3 (1939), this Court dismissed a writ of certiorari to the Court of Appeals of New York for want of jurisdiction, saying:

> "In the absence of an explicit statement by the Court of Appeals that it annulled the assessment of the tax solely because of a violation of the federal Constitution, we are unable to find that the decision of the highest court of the State did not rest upon an adequate non-federal ground. [Citing cases]."

Accord: *New York Central Railroad Co.* v. *New York*, 186 U.S. 269, 273 (1902); and *Lynch* v. *New York ex rel, Pierson*, 293 U.S. 52, 54-55 (1934), wherein this Court said:

> "[I]f it does not appear upon which of two grounds the judgment was based and the ground independent of the federal question is sufficient in itself to sustain it, this Court will not take jurisdiction. [citing cases.]"

(2)

The decision below rests upon an adequate, independent basis in Illinois law.

The Supreme Court of Illinois based its decision upon Illinois law. The reference in the Court's opinion to "due process of law" (A. 7) refers to the common law of Illinois, which for many years has required that expulsion proceedings of private business associations must not be "influenced by bias, prejudice or lacking in good faith," and cannot be "contrary to rudimentary due process or natural justice." *Virgin* v. *American College of Surgeons*, 42 Ill. App.2d 352, 369 (1st Dist. 1963); see also *Ryan* v. *Cudahy*, 157 Ill. 108, 121 (1895).

In *Bowe* v. *Scott*, 233 U.S. 658, 665 (1914), this Court said of a reference in a pleading to "due process of law":

> " . . . But it is settled that such an averment making no reference to the Constitution of the United States and asserting no express rights thereunder is solely referable to the state constitution, which in this instance has a due process clause, and affords no basis whatever for invoking the jurisdiction of this court. [Citing cases.]"

Accord: *Miller* v. *Cornwall Railroad Co.*, 168 U.S. 131, 134 (1897).

The Illinois Constitution provides (1870 Const., Art. II, Sec. 2; 1970 Const., Art. I, Sec. 2):

> "No person shall be deprived of life, liberty or property without due process of law . . . "

There is no reference in the Court's opinion to any provision of the United States Constitution or statutes, or to any federal case. The Court simply did not have reference to or rely upon the federal Due Process Clause in reaching its decision.

(3)

The cases cited by petitioners are not in point.

The cases cited in the Petition deal with issues of "state action" under the 14th Amendment Due Process Clause. These issues were discussed by the Illinois Appellate Court (A. 28-29), but were not reached by the Illinois Supreme Court. Rather, the judgment of the Illinois Supreme Court is grounded completely upon Illinois law.

Conclusion

This case is not one of nationwide importance, since it involves only Illinois law, and is a precedent only in that State.*

The decision below is based upon an adequate, independent state ground, and is not based upon federal law. Accordingly, the petition for certiorari should be denied.

Respectfully submitted,

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September 25, 1972

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* In August, 1972, Certified took a simple step to avoid the decision of the Supreme Court of Illinois. Its members adopted a new by-law providing for review of disciplinary proceedings by the American Arbitration Association.